

**MINUTES**  
of the  
**LEGISLATIVE CONSUMER COMMITTEE**  
May 25, 2005  
State Capitol, Room 137, Helena, MT

**COMMITTEE MEMBERS PRESENT**

Representative Walter McNutt, Chairman  
Representative George Groesbeck  
Senator Sam Kitzenberg  
Senator Ken Toole

**STAFF PRESENT**

Robert A. Nelson, Consumer Counsel  
Larry Nordell, Economist  
Mary Wright, Attorney  
Mandi Shulund, Secretary

**VISITORS PRESENT**

Rick Hayes, Qwest  
Chuck Johnson, Lee Newspapers  
Todd Everts, Legislative Services Division  
Marilyn Daumiller, Legislative Fiscal Division

**CALL TO ORDER**

The meeting was called to order by Chairman McNutt.

**MINUTES OF THE PREVIOUS MEETING**

**MOTION:** Representative McNutt moved approval of the minutes of the December 10, 2004 meeting.

**VOTE:** The motion passed unanimously.

**PROFILE OF THE OFFICE OF THE CONSUMER COUNSEL - BOB NELSON  
PROVIDED AN OVERVIEW OF THE OFFICE OF THE CONSUMER COUNSEL**

The office of the Consumer Counsel (MCC) has a constitutional mandate to represent consumer interests before the Public Service Commission (PSC) and

successor agencies. MCC has statutory responsibilities to represent consumer interests before other administrative agencies, primarily federal agencies and courts. Funding for MCC is based on appropriation and regulated utility operation gross operating revenues. Utilities report gross revenues from regulated operations to the Department of Revenue and a tax rate is calculated by using the MCC appropriation, set by the legislature, and utility gross operating revenues. The current tax rate is 0.0013 and any appropriation that MCC does not spend leaves a remaining balance used to offset the appropriation used in the calculation the following year. The annual budget for fiscal year 2005 is \$1,464,143, which includes a \$250,000 contingency fund for unexpected caseload. MCC mostly appears before the PSC but does appear before Federal agencies such as a Federal Energy Regulatory Commission (FERC) and in various courts. There are several types of proceedings that MCC gets involved in, but the most time is spend on rate cases, either general or trackers. General rate cases take place when utilities file requests for rate increases. Two areas that MCC focuses on are revenue requirement, which is how much the utility will earn, and cost allocation and rate design, or who will be paying for the revenue the utility receives. Trackers are when the PSC has allowed the utilities to take one item, typically fuel expense, and track these costs. The PSC has 9 months from when the applications are filed to issue an order. During that time, parties participate in discovery, reviewing information, and filing testimony, all of which leads to a hearing. At times, stipulation agreements are reached and presented to the PSC for approval. Most rate cases are gas, electric or telecommunications, but MCC also participates in regulated water and sewer cases. MCC occasionally gets involved in rulemakings. MCC also participates in collaborative groups, where parties try to resolve issues before they are brought to the PSC. Representative McNutt stated that there is not much information on the Consumer Committee regarding duties and responsibilities, but the committee does approve staff compensation, new staff members, annual budgets and hiring expert witnesses. The committee does not interject in how the staff handles cases or technical aspects of participating as intervenors. Senator Toole said that he felt the role of the committee seemed to be very standard and felt the role should be to

advise and express opinions, but he did agreed the committee should not step into technical details and management work of the office. Representative McNutt added that the meetings do include discussions of cases and the committee members are welcome to give thoughts, opinions and concerns.

### **SELECTION OF CHAIR AND VICE CHAIR**

Representative McNutt opened nominations for Chair of the committee. Senator Kitzenberg nominated Senator Toole. Senator Kitzenberg said he has the utmost respect for both Representative McNutt and Senator Toole and feels both are qualified, but he felt Senator Toole's knowledge, vision, and ideas need to be put into leadership. Representative Groesbeck nominated Representative McNutt, stating that Representative McNutt would continue bringing leadership, perspective and history to the committee. Representative McNutt closed the nominations.

Senator Toole shared his background in energy issues and committees and said he would like to see a more active and public committee informing the public about energy and bringing comments and concerns back to the staff. Senator Toole also added that major issues, such as Qwest over earning or MDU's allowed rate of return, should be discussed at the meetings and that it was time for leadership of the committee to change. Representative McNutt said that MCC, not the committee, is constitutionally mandated to be the advocate for the regulated ratepayers in Montana and he would oppose the committee getting involved on that level.

Representative McNutt added that all meetings are open for public comment and the committee has held informational sessions by having participants come for discussion of major issues happening around the state. Representative McNutt took a roll call vote:

Senator Kitzenberg – Senator Toole

Representative Groesbeck – Representative McNutt

Representative McNutt – Representative McNutt

Senator Toole – Senator Toole

Role call resulted in a tie and the committee took a 10-minute break for caucus. Representative McNutt called the meeting back to order and announced that the election would be rescheduled until the next meeting.

### **BOB NELSON PROVIDED THE FOLLOWING HIGHLIGHTS OF CASES CURRENTLY PENDING**

#### **NorthWestern Energy**

03-12872 - Bankruptcy Proceeding: Just before NorthWestern Energy (NWE) filed for bankruptcy, MCC filed a Petition for Financial Investigation with the PSC regarding NWE's financial status, so the investigation and bankruptcy proceeding were proceeding at the same time. A final order has been issued in the financial investigation, resolving the ratemaking issues before the PSC, and MCC is currently monitoring the remaining bankruptcy issues.

Liberty Audit: As part of the financial investigation and settlement in the bankruptcy proceeding, NWE was required to conduct a thorough reliability audit of its transmission and distribution facilities. Liberty Consulting was retained by NWE to conduct the audit, and several recommendations were made by Liberty. NWE is currently implementing those recommendations, which MCC is monitoring. MCC felt that NWE was over earning, even during bankruptcy proceedings, on a stand-alone basis for the utility so also as part of the financial investigation, NWE is required to file rate case materials no later than 9/2006, using 2005 as the test year.

N2004.11.186 - 2005 Electric and Natural Gas Tax Tracker Filing: NWE was authorized by the 2003 legislature to file tax trackers. MCC's general position is to oppose single item trackers except for unusual, major issues, such as fuel expenses, because then revenues and expenses are looked at on a matched and balanced basis rather than tracking one item. Senator Toole asked if all taxes were tracked, or if a different tracker was filed for each type of tax. Bob stated that this case involved all property taxes, but there are different types of taxes taken into account, such as state and federal taxes. Senator Toole asked for clarification as to the types of taxes included in tax trackers, which Bob said he would provide. MCC

filed comments stating NWE didn't follow PSC precedent in the federal tax deductibility rule. The PSC issued an interim order accepting MCC's approach which reduced the amount of tax recovery that NWE had originally sought.

D2004.9.60/D2003.6.77 - Annual Electric Default Supply Trackers: NWE files tracker applications on a monthly basis, so rates do change monthly. Each year, NWE then files a yearly tracker that acts as an audit of the monthly trackers filed and the larger issues involved in purchasing practices over the past year. These two dockets are annual trackers that, based on NWE's default supplier role and purchasing electricity basically on the wholesale market, are tracking these monthly expenses. The 2003 tracker ended up suspended due to the bankruptcy filing but has since been reactivated and consolidated with the 2004 tracker. The general issue in the annual trackers is the prudence of the utilities' purchasing practices and general strategies for acquiring power. A few long-term purchases that NWE made as a default supplier included in these dockets are the Tiber Montana Hydro and Thompson River CoGen. The Basin Creek and Colstrip 4 purchases were brought in for advance approval, but the Tiber Montana Hydro and Thompson River CoGen were contracted and brought in for cost recovery. The issue of returning choice customer load still remains. During the 2003 legislature, amendments to the restructuring law were passed that restricted customer choice with the intension of protecting the default supply load, so the default supplier can better plan long-term which results in lower costs. Also, the PSC is required to protect small default supply customers from returning customers aware of the best times to be on the market and the best times to return to default supply. A few years ago as prices increased, many choice customers, especially customers of Commercial Energy, returned. Because of this issue NWE revised their filing to request an increased recovery from 1.7% to 3%. MCC filed comments regarding NWE's revised filing, stating that the PSC's role in protecting the small default supply customers is unclear since the issue is so complicated and with changing rates and customers returning at different times, calculating the exact impact and creating individual tariffs to surcharge each customer would be impossible. Senator Toole asked Bob if customers can keep

switching between market and default supply. Bob said that there are different requirements for different size customers and they could come and go to the extent the PSC later creates choice programs, which are much more restricted but loads larger than 5 megawatts could not come back once they made a choice. MCC tries to make recommendations as direct as possible and in these cases, MCC testimony will state that there is a statutory obligation to protect small customers and other potentially conflicting statutory requirements. John Wilson's recommendation is to create an accounting system to track current price changes and during the next tracker actual numbers could be used to create a surcharge. With the 2003 filing, MCC felt that some revenues were not included, so NWE amended that filing by roughly \$3 million and the USB funds allocation was addressed in both filings. MCC and other parties entered into a stipulation, with the primary objective being to redirect money, originally directed to conservation, to the low income discount due to high winter heating costs. The conservation expenditures then would be funneled into the default supply procurement process and recovered through other parts of rates instead of the USB surcharge. Another part of the stipulation was that USB issues would be addressed separately in a specific USB docket. The PSC approved the stipulation. MCC testimony will also address the QF makeup issue, DSM tracker recovery, PPL supply interruption and cost impact of returning choice customers. QF stranded costs were costs above market related to QF projects. When the final restructuring order came out, those QF costs were written down to \$32.75/mwh for several years, but many contracts were in the \$60-70/mwh range. The differences between \$32.75 and \$60-70 is what was removed from the supply part of rates and is now being recovered as the CTC-QF charge. The DSM cost recovery is a conservation expenditure usually recovered in general rate cases, but this is the first request made to recover them through a tracking proceeding and are now being viewed as a default supplier ongoing supply expense. Senator Toole asked if the cost of the investment over a period of time was put into a tracker, considered as lost revenue, or both. Bob said that the utility has expensed conservation expenditures for some time, which MCC has historically opposed, but the PSC has gone to expensing conservation as an incentive. In these trackers, the utility wants

to recover the expensing of capital items and is requesting an estimation of lost revenues due to conservation and load reduction and the tracking of those lost revenues. Senator Toole asked if these expenditures were made within the last year and Bob said the expenditures in this instance were made during the 2004 tracking period. John Wilson's view is that the inclusion in the tracker of the actual expenditures is fine and should be treated as all the other power purchases are, but he has some objections to the way the utility proposed the lost revenue adjustment.

D2004.7.114 - Electric Trackers: The January Electric Tracker filed 12/15/04 resulted in a residential rate decrease to \$.04117/kWh, or 0.6%; The February Electric Tracker filed 1/14/05 resulted in a residential rate increase to \$.042201/kWh, or 0.8%; The March Electric Tracker filed 2/16/05 resulted in a residential rate increase to \$.04294/kWh, or 0.6%; The April Electric Tracker filed 3/16/05 resulted in a residential rate increase to \$.04612/kWh, or 9.2%; The May Electric Tracker filed 4/15/05 resulted in a residential rate decrease to \$.04636/kWh, or 1.2%; The June Electric Tracker filed 5/16/05 resulted in a residential rate decrease to \$.04463/kWh, or 3.7%.

D2005.2.14 - Advanced Approval of Power Supply Agreements: The two agreements involved with this filing were Judith Gap and Colstrip 4. Both projects were bid into NWE's RFP for default supply resources and won. The advanced approval process was established by 2003 legislative action. The PSC separated consideration of these two projects because of the timeframe involved in financing agreements for Judith Gap. John Wilson filed testimony on behalf of MCC supporting the application, finding it had several advantages, including it should help deal with the market power issues surrounding PPL and that it was an economic choice for NWE relative to the other projects that were bid. Dr. Wilson recommended a cap be put on firming costs to minimize the risk to ratepayers from those unknown costs. There are integration costs or firming costs associated with other wind resources, but it was much less certain in this case and the range was much larger. The PSC rejected that recommendation, finding that the risk was relatively small and that risk could be dealt with through prudence reviews of the utility's actual

integration activities. Senator Toole asked Bob if any of the firming issues were included in the bids from wind projects, and Bob said that they usually are not included. NWE has withdrawn the Colstrip 4 portion of the application because discovery from competitors in the bidding process required confidential responses so NWE is going to petition the PSC for rulemaking on the discovery process in this type of proceeding and will refile the Colstrip 4 application after the rulemaking process is complete. Colstrip 4 is not scheduled to begin until 2007 and because the utility owns this resource, there are no financial issues surrounding this application.

Transmission Sale Investigation: As part of the sale of generation facilities, a contingency deal was made between MPC and PPL that if PPL was not successful in acquiring certain other interests in Colstrip 4 generation, then they would acquire transmission facilities that were valued at the purchase price of \$97 million. MCC was interested in this because ratepayers have an interest in gain on the sale of utility property. NWE has settled this dispute with PPL, with part of that settlement including sale or transfer of substation equipment for around \$9 million. This docket has been on hold due to the bankruptcy proceedings, but MCC will probably ask the PSC to reinstate the investigation.

D2004.7.113 - Gas Trackers: Similar to electric costs, gas costs are tracked for every major gas utility in the state. There is much more experience tracking gas than electric and gas rates are usually much more volatile. The January NWE Gas Tracker filed 12/15/04 resulted in a gas cost decrease from \$6.176 to \$6.033 (Residential rates decreased from \$9.01 to \$8.86, or -1.7%); The February Gas Tracker filed 1/14/05 resulted in a gas cost decrease from \$6.033 to \$5.78 (Residential rates decreased from \$8.86 to \$8.62, or -2.81%); The March Gas Tracker filed 2/16/05 resulted in a gas cost increase from \$5.78 to \$5.96 (Residential rates increased from \$8.62 to \$7.96, or 7.7%) NWE also proposed to amortize \$10 million deferred account over the next 4 months, for a \$0.84/Dkt reduction; The April Gas Tracker filed 3/15/05 resulted in a gas cost increase from \$5.96 to \$6.79 (Residential rates decreased from \$7.96 to \$8.79, or 10.4%); The May Gas Tracker



filed 4/15/05 resulted in a gas cost increase from \$6.79 to \$7.00 (Residential rates increased from \$8.79 to \$8.99, or 2.3%); The June Gas Tracker filed 5/16/05 resulted in a gas cost decrease from \$7.00 to \$6.51 (Residential rates increased from \$8.99 to \$8.51, or -5.4%).

D2004.6.88/D2003.6.66 - Annual Review of Monthly Gas Trackers: These dockets are annual gas tracker reviews and were consolidated due to the bankruptcy proceedings. For the 2003 filing, George Donkin, on behalf of MCC, did not find any imprudence in NWE's purchasing practices. The PSC disagreed with Mr. Donkin in its order and as a result, NWE has sued the PSC. That case is currently in district court. In the 2004 filing, Mr. Donkin again did not find any actual imprudence. MCC and NWE agreed to a reduction in interest expenses of \$200,000 and agreed to participate in an advisory committee to seek better ways to plan NWE's purchases. The PSC approved the stipulation between MCC and NWE, and Larry has been participating on the Gas Purchase Advisory Committee. The PSC has also settled the district court litigation over the prior period with NWE and, in effect, split the years. The reduction that occurred in the first year remains and the reduction that would carry forward as a result of the order through the second year will be eliminated, that amount being between \$5-6 million.

D2005.4.50 - Complaint by GRS Energy, LLC: MCC is monitoring this docket, which is a complaint by a losing bidder for the MFM project. Senator Toole asked Bob if the hardware has been sold. Bob believed that the turbines have been sold and that an agreement is in place with another purchaser who had their own turbines to bring in, which are more efficient so running costs should be lower but because they are bigger, they will be able to generate more power. Senator Toole asked if the plant was still viable. Bob felt it was, but it is still on the drawing board. Senator Toole asked what size the new turbines were. Larry thought there were two of them at 260mw.

D2005.5.84 – 2005 BPA Residential Exchange Credit Filing: NWE still receives benefits relating to the residential exchange credit available under the NorthWest Power Act. This credit is calculated using BPA's rates and market rates. With BPA's rates recently going down, the credit has increased.

FERC Docket No. ER05-968-001 Basin Creek Application for Initial Market Based Rate Tariff: This is another pre approval application that NWE had pending in late 2004. MCC recommended PSC approval with some conditions to the Basin Creek power purchase. The PSC approved that request and, because Basin Creek is a wholesale sale to NWE, it requires FERC approval also. MCC is monitoring this filing.

### **Montana Dakota Utilities**

D2004.4.50 - Application to Increase Natural Gas Rates: This docket is a general rate increase and because MDU tracks their gas costs, MDU general rate cases involve all non-gas costs. MDU requested an increase of \$1.5 million, or a 2% increase overall, but this actually amounts to an 8% increase in non-gas costs. MCC worked with MDU on some of this filing, specifically the depreciation rate issues. Al Clark filed testimony on behalf of MCC, recommending a decrease of \$250,000. This amount was based on other testimony filed on behalf of MCC. Steve Hill recommended a 9.75% return on equity and George Donkin performed a cost allocation study. MCC and MDU submitted a stipulation agreement for a \$1 million increase that is recovered by a 10 cent increase on the service charge for residential customers and a 40 cent increase in service charges for general service customers. The PSC issued an order that adopted the stipulation.

D2004.5.69 - Monthly Gas Cost Tracker: The January monthly tracker filed 12/10/04 resulted in a decrease of \$0.60/dk showing current gas costs of \$8.95/dk; The April monthly tracker filed 3/10/05 resulted in a decrease of \$0.21/dk showing current gas costs of \$8.75/dk; The May monthly tracker filed 4/10/05 resulted in an increase of

\$0.82/dk showing current gas costs of \$9.56/dk; The June monthly tracker filed 5/10/05 resulted in a decrease of \$0.52/dk showing current gas costs of \$9.04/dk. On 4/8/05 MDU filed their Annual Gas Tracker and True-Up.

### **Williston Basin**

RP00-107-000: Williston Basin Interstate Pipeline is a subsidiary of MDU Resources and is the pipeline and supply function of the utility. 20 years ago MDU separated their gas utility so part of it would be regulated by FERC and not the state PSC. MCC continues to actively participate before FERC on behalf of MDU customers in these Williston Basin cases. A few years ago, FERC issued an order indicating substantial refunds were owed to local customers, and MCC has been trying to free up these refunds by filing motions with FERC that have gone ignored, but recently FERC did issue a final order in this docket that should release these refunds. The refunds are estimate to be around \$11 million for Montana customers.

### **PacifiCorp**

D97.7.91 - PacifiCorp Restructuring Plan: When the Restructuring Act was passed in 1997 it essentially applied to Montana Power Company (MPC) and Pacificorp. Pacificorp filed their transition filing in 1997 and MCC responded by stating there were negative stranded costs, sometimes referred to stranded benefits. PacifiCorp was required to take its generation out of the rate base, and MCC calculated stranded costs associated with those facilities. When the Restructuring Act was passed, many thought that with market prices being low, those facilities weren't worth as much as they showed on the books for ratemaking purposes, so a payment would be due to MPC and PacifiCorp. MCC did not agree and it turned out, based on market price forecasts put into the transition filing, MCC calculated negative stranded costs at \$60 million. This results because, over time, PPL would get more from market sales than from selling power at continued regulated rates. A hearing was held in 1998 but a PSC decision was held up due to several events, including the sale to Flathead Electric and issues in the MPC docket that needed resolving before being addressed in this docket. When SB390 was passed in 1997, the utilities

asserted that generation was worth less than reported on the books and when generation was separated from the utility in restructuring, the utilities felt they would be owed money from ratepayers. MCC never accepted the calculations and when testimony was filed, MCC's case was that the generation was worth more than it appeared on the books, which turned out to be correct when Montana Power sold their generation. The generation gain was credited against regulatory assets and QF obligations, so several hundred million dollars was returned to ratepayers through the netting process. In this case, PacifiCorp did just the opposite. They sold their distribution operation and kept their generation and because of this, MCC felt the hearing needed to be continued on the valuation of that generation and what might be owed to ratepayers. After the hearing, the PSC staff issued a memo reporting they calculated stranded benefits of around \$15 million and concluded that substantial benefits should be paid back. The Commission issued Final Order 5987h on 10/28/04, even though restructuring laws state that they have to file a final order within 9 months of the filing, finding they do have jurisdiction despite the sale and passage of several years. The PSC found that the legislature did not fashion a remedy for stranded benefits and they focused on the language of transition charges, concluding that the statute required a transition charge to be a liability exacted from the customer rather than the utility. MCC filed a Motion for Reconsideration, stating the PSC failed to consider other provisions in SB390, such as netting and protection for ratepayers. PacifiCorp responded strongly on the jurisdictional argument, and MCC's motion failed on a 2-2 vote. (Commissioner Rowe was the only current Commissioner who has heard the case and since Commissioner Schneider was involved as a representative for one of the parties, he excused himself). The PSC recognized that there are stranded benefits but believes there is no remedy. MCC feels that the legislature did intend for protection of ratepayers and a remedy in this situation. This case is a one-time situation that would not have any future application because it applies retroactively to PacifiCorp.

Cause No. ADV 2004-955: MCC has sought review of the D97.7.91 final order in District Court because of the amount of money at stake and Pacificorp has intervened on the side of the PSC. MCC will soon be filing a brief.

### **Energy West**

D2004.8.113 - EWM Monthly Gas Tracker: The January monthly tracker filed 12/13/04 resulted in a residential rate decrease to \$7.87/Mcf; The February monthly tracker filed 1/1/05 resulted in a residential rate decrease to \$7.82/Mcf; The March monthly tracker filed 2/13/05 resulted in a residential rate decrease to \$7.74/Mcf; The April monthly tracker filed 3/10/05 resulted in a residential rate increase to \$8.36/Mcf; The May monthly tracker filed 4/10/05 resulted in a residential rate decrease to \$8.22/Mcf. Cascade Propane Tracker: The May monthly tracker filed for the Cascade Tracker on 4/12/05 resulted in a propane cost increase of 56.4% to \$1.10/gal., burner tip rate to \$4.8723/ccf. Senator Toole asked if there were any other municipal propane systems in the state, and Bob mentioned there were municipal propane systems in West Yellowstone, Five Valleys and Culbertson and propane prices tend to be more volatile than gas prices since propane prices are more closely tied to oil prices.

D2004.3.46 - General Rate Increase-Great Falls: EWM requested \$1.1 million increase amounting to a 4% increase to residential customers. MCC and EWM entered into a stipulation agreeing to a \$536,000 increase. The PSC denied EWM's request to waive filing an allocated cost of service study, so George Donkin filed testimony on behalf of MCC that resisted EWM's efforts to shift the increases to smaller customers. Another stipulation was filed, agreeing to a slight increase in customer service charges and a limit on the revenue increase allocated to residential customers.

### **PPL Montana**

FERC Docket No. ER99-3491 PPL Montana Market Power Issues: MCC has been involved in this issue before FERC for several years in various dockets. MCC has

been addressing the situation caused by the sale of almost all of MPC's generation to one entity that now has the market power that MPC had but is not regulated the way MPC was when it had that same generation. Many of these dockets have been held up because FERC has been trying to go through a generic proceeding on market based rates. The federal power act requires just and reasonable charges for wholesale sales and FERC has interpreted that to mean that when a competitive market is established just and reasonable charges are the result, which brings up the issue of how a competitive market can be proven. One FERC generic proceeding recently resulted in a couple of indicative market power screens, which led to FERC requiring utilities with market based rates to file under these new screens, which PPL did. MCC protested their filings, calculating they failed the screens. Three issues leading to differing results are a calculation of transmission capacity, getting power in and out of Montana, and, regarding Colstrip generation, how much uncommitted generation PPL owns. PPL deducted the Colstrip generation it is selling under contracts to NWE through mid 2007 from its amount of ownership, which had a huge impact on the calculation. MCC feels it is incorrect for them to make that deduction because that is the capacity that would be bid into the RFPs. In a deficiency letter by FERC, FERC indicated an inclination to agree with MCC's positions and asked PPL to respond to the deficiencies, PPL continued their stance, so hopefully FERC will continue to view PPL's filing as deficient. Senator Toole asked how much of a difference would be made if PPL falls under regulated tariff instead of a market tariff. Bob said that is unclear because of the type of mitigation FERC would require, but if they were to require cost based regulation that includes cost of capital and disallowances, the cost basis for those facilities could reach the low 20's, so the difference could be significant.

### **Miller Oil Company**

D2004.10.168: This application was filed on 10/19/04, requesting a propane rate increase of \$66,387, or a 17% overall increase.

### **Mountain Water**

D2005.4.49 – Application to Increase Water Rates: MWC files for increases about every two years. This filing requests roughly a 10% increase for water rates.

### **Havre Pipeline**

D2004.5.48 – Application to Increase and Unbundle Interruptable Transportation Service: Havre Pipeline is a gas transmission pipeline in North Central Montana, regulated by PSC, who applied to increase and restructure rates. Certain customers would see a 43% - 62% increase. Regulated utilities ship on this pipeline, so these costs could flow through utility gas cost trackers and affect customers.

### **Five Valleys**

D2004.12.202 – Application for Increase in Rates: This application pertains to propane service in Swan Valley, and requests a 67% increase and to implement monthly trackers. MCC is reviewing this case.

### **Cut Bank Gas Company**

D2004.3.47 – General Rate Increase: This general rate increase was filed 3/25/04, requesting a \$.07/mcf and a \$2/mo service charge increase. The PSC issued Interim Order 6587 on 9/3/04, implementing the requested increases. Interim approvals are subject to refund, and in this case, MCC does not agree with the interim increase granted so there is potential for a refund. Also, it appears that Cut Bank Gas has been changing rates on a monthly basis as if they had a monthly tracker, which they do not, so this is another factor in this case.

### **Landmark Water Company**

D2005.5.75 – Application for Water Rate Increase: Water companies often come into existence as part of a subdivision development and following their initial rate period of two years, Landmark filed an application for a water rate increase, requesting a base rate increase from \$29.75 to \$43.88 and a commodity increase from \$1.88 to \$2.07/1000 gal for usage above 6000 gal/month.

## **Rules**

**Adoption of Energy Utility Service Standards:** This proceeding may have come about due to the work done in the bankruptcy proceeding and the Liberty Audit. The PSC adopted generic rules relating primarily to general standards but also to record keeping requirements. MCC generally supports these rules, but did oppose some suggestions from large industrial customers. A hearing was held on 5/3/05.

The committee broke for lunch at 12:40 and reconvened at 1:45.

Bob addressed Senator Toole's comment regarding MDU earnings. MCC did initiate some action to pursue this issue several years ago, but due to workload, and time constraints, and a changing circumstances, ended up dropping the case. MCC may revisit this issue again in the future. Mary will discuss Qwest earnings during her telecommunications status report.

## **LARRY NORDELL PROVIDED THE FOLLOWING UPDATE ON GRID WEST:**

Grid West was originally proposed as RTO West and does have a long history. MCC has been formally participating in some FERC dockets relating to applications made by the Northwest Utilities but the entire effort has begun moving in a different direction, now known as Grid West. Larry Nordell handed out a brief summary showing the status of Grid West, which currently has 87 members, either active or declaratory. Many years ago the transmission grid was made up of small local power and light utilities, mainly serving residential and business loads. This gradually became larger utilities building transmission needed to serve their customers and generation they owned. Montana Power Company was formed in 1912 by merging small transmission companies. Because of this, the book value of the company was subject to battles before The Federal Power Commission and the PSC for many years. MPC eventually built power lines for their own needs, with the only interconnections between them used for interchange purposes or for joint ownership of transmission. Over the years non-utility generators came about and wanted access to the transmission grid, but ran into roadblocks from transmission owners,



so FERC issued a series of orders creating open access. Open access then had transmission owners seeking independent operators to run their systems. There is still interest in finding a better way to manage the system. A management and pricing conference was held in 1995, and out of that conference the Independent Grid Operator (IndeGO) was formed. A number of ideas were discussed and pricing methods and proposal were devised on how to efficiently operate the system. This process has gone through three major phases. IndeGO was the first phase, RTO West was the second (from 2000-2004) and the third being Grid West. The main difference between IndeGO and RTO West was that RTO West proposed to form an independent agency that would operate and control the system rather than simply being a grid operator, which would be a much larger effort. The current status of Grid West governance proposal is to have an independent board, overseen by a five-class members committee, operating the system. The five classes that make up the members committee are major transmission owners, transmission dependent utilities, power marketers and generators, state regulators and direct customers. Each class gets six votes with the regulatory class getting seven votes. Part of the governance proposal is five key decisions that will require a super majority vote among the members committee. Decision point 1 was reached because it involved no commitment to any parties spending money and there are many opportunities for parties to drop out. A cost benefit study is underway which many parties, including MCC, would like to see before making any commitments. Opposition at this point is mainly because of three factors. The first being fallout from deregulation in the 1970's, the second is the fear of gold plating costs of an independent organization, and the third is, for example, BPA customers not wanting anything to endanger their access to federal hydro power, not wanting any competition for it, and especially not wanting to end up under FERC jurisdiction. The opponents have collected into a group called Transmission Improvement Group, or TIG, which is a counter to Grid West. Decision point two will be to seat a developmental board. MCC is a member of a developmental corporation that has been formed, which includes other state consumer advocates and state commissions. Once the developmental board is formed the task will be to negotiate transmission operating agreements. Senator

Toole asked what the procedure was to become a member of Grid West. Larry said that members normally pay dues, but MCC managed to get an exception from paying dues because of the public office status. Senator Toole asked how a new facility would fit into the system if it was built out of Canada. Larry said that if owners signed transmission operating agreements with Grid West, then it would be managed as part of the system and it is hoped that the entire system would be handled this way. Senator Toole asked if there were any concerns over the regional group handling projects. Larry said it would depend on the terms and conditions under which the projects were turned over. There is still a lot of work to be done in defining the proposal.

**MARY WRIGHT PROVIDED THE FOLLOWING HIGHLIGHTS OF TELECOM CASES CURRENTLY PENDING:**

**Qwest Proposed Tariff**

D2004.8.135 – Qwest Competitive Response Tariff: This filing by Qwest Service Corporation proposed a tariff that set out a competitive response program. This program would, if approved, allow Qwest to give incentives to customers returning to Qwest. MCC filed testimony in support of Qwest on the basis that the incentives benefit consumers. A hearing was held on 4/13/05 and the briefing process is just beginning. This program only applies to local exchange service, not long distance.

**Eligible Telecommunications Carriers (ETC):** ETC status allows carriers, other than the incumbent carrier in the service area, to receive funds from the Federal Universal Service Fund. To obtain ETC status, carriers must file with the PSC and prove that the carrier provides their services as required by federal law and that their ETC status is in the public interest. FCC provides but does not enforce a rule stating that the ETC receives support for every customer changing from the incumbent carrier. If the FCC enforced this rule, MCC would probably not oppose any of these cases. Senator Toole asked Mary about how much money was at stake in ETC cases. Mary said that the particular universal service portion of the fund is high cost

support and that costs in rural areas per customer are greater than in urban areas so in larger cities, there may be no high cost support but for rural areas, costs can be considerable. Senator Toole asked if a wireless company received less funding as an ETC. Mary said they do not because they are compensated based on the incumbent carrier costs that have nothing to do with wireless costs.

D2003.10.156 - 3 Rivers Wireless: This case refers to a 3 Rivers Wireless affiliate requesting funds on top of their land line. Midway through this case, 3 Rivers realized they did not make a strong case and requested the opportunity to add a witness. MCC and MITS objected, but the PSC granted their request and nothing has happened since then.

D2004.1.6 - Triangle Communications Systems, Inc.; D2004.1.7 - Sagebrush Cellular, Inc.; D2004.3.36 - Blackfoot Communications, Inc.; D2004.3.38 - Range Telephone Cooperative; D2004.8.127 - VCI Company: These cases have been filed for quite some time, but no procedural schedules have been set yet. MCC has intervened in all five cases.

D2003.8.105 – Cable and Communications Corporation: This case refers to a cellular affiliate of Mid-Rivers Cooperative. MCC filed a Motion for Reconsideration of the final order, which the PSC denied.

### **Extended Area Service**

EAS provides local calling between or among exchanges eliminating the need to make toll calls. EAS may involve different exchanges of the same provider, or of two or more providers. Phase I of each case is the applicant establishing that there is a “community of interest” by showing certain minimum call volumes or demographic connections. In phase II, the providers involved must calculate revenue changes that EAS will cause and propose rate changes to make up for the revenue changes. The

EAS proposals listed below have been approved and are now being implemented. One application has been suspended at the request of the applicant.

D2003.1.8 - Blackfoot Telephone Cooperative/Qwest: Blackfoot petitioned the PSC to expand the existing Missoula EAS region to include all but one of its exchanges and to expand the existing Helena EAS to include Blackfoot's Avon exchange. While this case was pending, The Western Montana Calling Coalition, which is made up of Ronan Telephone Company, Hot Springs Telephone Company, Ronan Telephone Consumers Committee and the Salish and Kootenai Tribes, filed a request to expand Blackfoot's proposal to include Ronan and Hot Spring exchanges in the Missoula expanded exchange. Blackfoot has entered into a stipulation with the Coalition. On 9/29/04 the PSC issued a final order approving the Blackfoot-Qwest application.

D2002.10.132 - Triangle Telephone Cooperative Association, Inc., Central Montana Communications, Inc. and Qwest: Triangle and Central applied for EAS for the Havre, Lewistown, White Sulphur Springs and Great Falls areas. The PSC issued a final order approving the Triangle-Central-Qwest EAS application.

D2003.6.84 - Lincoln Telephone Company and Qwest: Lincoln Telephone Company applied for expansion of the existing Helena EAS region to include its Lincoln and Canyon Creek exchanges. Two public hearings were held in August, and ballots were sent to customers in both exchanges. Based on the results, the PSC approved the application.

D2004.2.14 - Ronan Telephone Company, Qwest and Blackfoot: In accordance with the stipulation described above in connection with the Blackfoot-Qwest EAS docket, RTC applied for EAS to the Missoula area. The PSC issued an order approving RTC's application.

### **Local Number Portability**

D2004.3.39 - Ronan Telephone Company, Hot Springs Telephone Company, MITS and MTA: LNP is a requirement of both state and federal law that requires incumbent telephone companies to “port” telephone numbers to competitive companies, mainly wireless carriers, so customers switching from the incumbent carrier to a wireless carrier can keep the original telephone number. State and federal law provides that state commissions can suspend or modify LNP and other requirements for rural telephone companies if they find certain economic or technical harms and that suspension is in the public interest. In 3/04, several petitions were filed with the PSC asking for immediate suspension of LNP and also for longer-term suspension. The PSC requested briefs from interested parties on whether to grant the immediate suspension. MCC filed a brief supporting the suspension for several reasons, including the effect on rural consumers of the cost of LNP implementation and provision. The PSC did issue an order granting the petitions for immediate suspension pending a proceeding on the longer-term suspension. MCC filed testimony and a hearing was held. At the hearing, all parties except Ronan Telephone Company and Hot Springs Telephone Company presented settlement agreements disposing of all the disputed issues, and the PSC approved the stipulations at the hearing. A contested case hearing was held with respect to Ronan and Hot Springs and the PSC issued a final decision on 11/30/04. Regarding Hot Springs, the PSC felt that no useable cellular service exists, therefore Hot Springs did not need to implement LNP at this time but were ordered to file periodic reports regarding cellular coverage in Hot Springs. The PSC felt that Ronan failed to prove that implementing LNP was unduly economically burdensome, technically infeasible or imposed an undue economic burden on customers generally and the PSC ordered Ronan to be capable of providing LNP on January 1, 2006.

### **Intercarrier Compensation**

Intercarrier compensation is the means by which telecommunications carriers compensate each other for the use of their facilities. Several national coalitions of carriers have made proposals to reform the Intercarrier Compensation process. The PSC held a roundtable on 6/29/04 to discuss Montana-specific intrastate issues.

The PSC and MCC also participated in a forum sponsored by NARUC to consider proposals advanced by several industry groups. The FCC has issued a formal notice seeking comments on intercarrier compensation and the PSC intends to reconvene the roundtable to get comments from Montana stakeholders before submitting detailed comments to the FCC.

### **Court Cases**

Cause No. CV 03-20-H-CCL Ronan Telephone Company v. PSC and MCC, (Federal District Court for the District of Montana, Helena Division): RTC appealed from the Commission's final order in Docket No. D2000.1.14 involving the rates, terms and conditions for interconnecting with Blackfoot Telephone Cooperative for the exchange of local traffic. The case is in federal district court because of provisions in the Telecommunications Act of 1996 that direct parties dissatisfied with a state commission's determinations regarding interconnection agreements to apply to federal court for relief. MCC and the PSC jointly filed a motion to intervene and motion for summary judgment and participated in oral argument. The Court granted the motion for summary judgment on all issues. Ronan filed a motion asking the judge to alter or amend judgment on two issues, which MCC and the PSC opposed. The motion is currently pending. Ronan also filed a notice of appeal of order to the 9<sup>th</sup> Circuit Court of Appeals in San Francisco. A briefing schedule has been set and MCC's position is that the notice of appeal is ineffective because of the pending motion in district court.

Cause No. CDV 2003-464 Qwest v. PSC and MCC, (Montana First Judicial District, Lewis and Clark County): Qwest petitioned for judicial review of two PSC orders requiring Qwest to file financial information for review of Qwest earning excess of its approved rate of return. Qwest challenged the PSC's authority to require the information. The Court issued an order vacating the two challenged orders and remanded them to the PSC, stating that requiring Qwest to provide the financial information has unlawfully shifted the burden to Qwest of proving their rates are unlawful. The PSC voted to appeal the District Court's ruling to the Supreme Court

and the PSC has filed its first brief. Representative Groesbeck asked Mary to explain the burden of proof issue. Mary stated that in a contested case, for example, if a utility came before the PSC asking for a rate increase, the utility would have the burden of proving the increase was needed. In this case, since Qwest hasn't voluntarily come in for a rate case, they argue they should not have the burden of proof. Senator Kitzenberg said that during the 2005 legislative session, Commissioner Jergeson spoke to him about either MDU or Qwest overcharging. Bob said that he would provide the committee with information on MDU and Qwest's current earnings. Bob recalled in Qwest's Annual report to the PSC last year, they were at a 45% return on equity, with the most current report showing 47%. He also recalled MDU showing a 17% return on equity. Senator Toole said he introduced a bill during the 2005 legislative session that would allow the PSC to initiate rate cases, but the bill failed. Rick Hayes of Qwest stated that Qwest's last annual report showed a rate of return of 21% and that Qwest has never seen a 40% return on equity. Bob said he would check his numbers and provide the information to the committee. Representative Groesbeck asked what the rate of return is based on and Mr. Hayes said that there were many issues involved in rate of return, because over that period of time there are different costs of capital taken in a snapshot, along with changes in technology and customer base.

## **FINANCIAL REPORT**

The current financial report was presented to the committee. The largest category is contracted services, which roughly amounts to 60% of the budget and is the most difficult to predict. Personal Services constitutes the bulk of the remainder of the budget, with a few smaller categories. Most categories run a month or two behind, so this is not the most updated information. Bob feels that the fiscal year will end within the base budget and not having to use any of the contingency fund. Senator Kitzenberg asked Bob if the committee had the authority to change MCC's direction or emphasis of areas to investigate. Bob said that the total appropriation was a set number, but there is some flexibility in allocations and budget amendments could be done, if needed. Bob also added that there is no specific amount allocated to each

case, so there is flexibility where money can be spent regarding all cases. Representative McNutt mentioned that during the 2003 legislative session, MCC requested an increase in the contingency from \$100,000 to \$250,000, which turned out to be a wise move due to the bankruptcy proceedings.

### **HIRING OF EXPERT WITNESSES**

As background, Bob explained that MCC has worked a lot with J.W. Wilson and Associates, who have consultants that specialize in different areas. Al Buckalew specializes in telecommunications, George Donkin is a gas industry expert and John Wilson specializes in electric rate issues. John Coyle, of Duncan and Allen, has worked on the bankruptcy proceedings for MCC. Senator Toole asked how the consultants are selected. Bob said the JW Wilson firm is relied on mainly because of experience and the working relationship that is established between them and MCC. Senator Toole asked for more information on the consultants and what rates they charge. Bob said he would provide that information to the committee. Senator Kitzenberg asked if a case was ever worked on without a contract. Bob said that has been done, but only when Frank has been the person working on the case and MCC works this way whenever possible.

MOTION: Senator Toole moved approval to hire the services of Al Buckalew in D2005.1.1 and D2004.8.135; George Donkin in the NWE Natural Gas Technical Advisory Committee, D2004.5.69 and D2005.4.48; John Wilson in D2005.4.48 and John Coyle in D97.7.91 and ADV 2004-955.

VOTE: The motion passed unanimously.

### **Public Comments**

Based on HB94 requirements, a public comment period was offered, but none was given.



**Adjournment**

There being no further business to come before the committee, the meeting adjourned.

Respectfully submitted,

\_\_\_\_\_, Robert Nelson, Consumer Counsel

Accepted by the Committee this \_\_\_\_\_ day of \_\_\_\_\_, 2005

\_\_\_\_\_, Chairman